

HONORABLE JAMES L. ROBART

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICROSOFT CORPORATION,

Plaintiff,

v.

MOTOROLA, INC., et al.,

Defendants.

No. C10-1823-JLR

**JOINT MOTION FOR AMENDED
SCHEDULING ORDER**

NOTED: September 21, 2011

MOTOROLA MOBILITY, INC., et al.,

Plaintiffs,

v.

MICROSOFT CORPORATION,

Defendant.

Microsoft Corporation ("Microsoft") and Motorola, Inc. (nka Motorola Solutions, Inc.),
Motorola Mobility, Inc., and General Instrument Corporation (collectively "Motorola")
respectfully jointly request minor adjustments to the Court's August 5, 2011 Minute Order
Setting Trial Dates and Related Dates (Dkt. No. 76) (the "Scheduling Order"), as set forth in
Part I of this motion.

**JOINT MOTION FOR AMENDED
SCHEDULING ORDER - 1**

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1 In Part II of this motion, the parties request clarification regarding whether an exchange
2 of non-infringement contentions is required in this case.

3 **I. Joint Request for Agreed Revisions to Case Schedule**

4 Pursuant to the Scheduling Order, dates may be amended upon a showing of good
5 cause. The parties respectfully submit that there is good cause to amend the current schedule.
6 Under the current schedule, expert reports regarding claim construction are set to be exchanged
7 before the parties exchange proposed constructions. The parties, however, have agreed that
8 they will not rely on expert testimony (or declarations) during the claim construction phase,
9 thereby nullifying the expert report deadlines regarding Markman in the current schedule.
10 Additionally, the parties seek to revise the current schedule to address the timing and necessity
11 of certain exchanges related to the parties' Markman briefing and to assist the parties with their
12 own internal deadlines. The jointly proposed schedule has been designed to maintain the
13 Markman hearing and trial dates this Court set in its August 5, 2011 Scheduling Order. For
14 these reasons, the parties respectfully submit that good cause supports adopting the agreed
15 proposed case schedule set forth herein.

16 The parties' agreed proposed case schedule is set forth in the table below. The parties
17 jointly request entry of the modified schedule as proposed in the right hand column of table
18 below. As reflected in the table, the parties request a modest extension of the deadlines for:
19 disclosure of preliminary invalidity contentions (one week); exchange of preliminary claim
20 charts (three weeks); submission of the parties' joint claim chart and prehearing statement (two
21 weeks); and submission of opening and responsive claim construction briefs (one week).
22 These extensions will provide the parties with a limited amount of additional time to complete
23 the discovery and analysis necessary to present the claim construction issues as clearly and
24
25

efficiently as possible, while preserving the previously scheduled date for the Markman hearing.

Where a date was not included in the Court's Scheduling Order, a dash appears in the center column of the table - *e.g.*, the parties propose that a deadline of December 9, 2011 be added for exchange of proposed claim terms for construction.

Where the parties have agreed to forego a particular exchange or disclosure required by the Scheduling Order, a dash appears in the right-hand column. This is the case with respect to expert reports on Markman issues, which the parties have agreed to forego.

Where the proposed date for an event remains unchanged from the original Scheduling Order (as in the case of the Markman hearing and all subsequent dates), the original date appears under both the center and right-hand columns.

Event	8/5/11 Order	Proposed Date
Preliminary infringement contentions and disclosure of asserted claims	September 2, 2011	
Disclosure of preliminary invalidity contentions	September 23, 2011	September 30, 2011
Reports from expert witnesses regarding <u>Markman</u> issues	October 21, 2011	- - -
Rebuttal expert reports regarding <u>Markman</u> issues	November 17, 2011	- - -
Exchange proposed claim terms for construction	- - -	December 9, 2011
Preliminary Claim Chart	December 2, 2011	December 23, 2011
Joint Claim Chart and Prehearing Statement	December 28, 2011	January 13, 2012
Opening claim construction briefs (24 pages per side)	January 20, 2012	January 27, 2012
Responsive claim construction briefs (24 pages per side)	February 3, 2012	February 10, 2012
<u>Markman</u> hearing at 09:00 AM	March 9, 2012	
Reports from expert witnesses under FRCP 26(a)(2) due	April 27, 2012	

1	Rebuttal expert reports due	May 25, 2012
2	All motions related to discovery must	June 8, 2012 (" <i>noted by</i> " date)
3	be noted on the motion calendar no	
4	later than the Friday before discovery	
5	closes pursuant to CR7(d)(3) or	
6	CR37(a)(2)(B)	
7	Discovery completed by	June 15, 2012
8	All dispositive motions must be filed	July 24, 2012 (" <i>filed by</i> " date)
9	by and noted on the motion calendar no	August 17, 2012 (" <i>noted by</i> " date)
10	later than the fourth Friday thereafter	
11	(see CR7(d))	
12	Settlement conference per CR	August 24, 2012
13	39.1(c)(2) held no later than	
14	Mediation per CR 39.1(c)(3) held no	September 14, 2012
15	later than	
16	All motions in limine must be filed by	October 22, 2012 (" <i>filed by</i> " date)
17	and noted on the motion calendar no	November 2, 2012 (" <i>noted by</i> " date)
18	later than the second Friday thereafter	
19	Agreed pretrial order	November 8, 2012
20	Pretrial conference to be held at 02:00	November 13, 2012
21	PM on	
22	Trial briefs, proposed <i>voir dire</i>	November 19, 2012
23	questions and jury instructions	
24	Jury Trial	November 26, 2012
25	(5 days)	

The parties believe that their jointly proposed revised case schedule provides a reasonable accommodation to the parties without impacting the Markman hearing or trial dates or imposing any additional burden on the Court. The parties will alert the Court promptly to any circumstances that warrant further modification as events unfold over the next 14 months.

II. Request for Clarification Regarding Exchange of Non-Infringement Contentions

A. Microsoft's Position: No Exchange of Non-Infringement Contentions Is Necessary

The key deadlines leading up to the Markman hearing are identified in the Court's August 5, 2011 Scheduling Order and referenced in the Court's Standing Order for Patent Cases. These deadlines include, among other things, the exchange of preliminary infringement contentions and preliminary invalidity contentions. Neither order includes any similar

1 requirement that the parties exchange non-infringement contentions. Microsoft interprets the
 2 Court's orders as modifying the default requirement in Local Patent Rule 121 that non-
 3 infringement and invalidity contentions be served 30 days after disclosure of opposing party's
 4 infringement contentions.

5 Microsoft believes that the parties' respective non-infringement positions should be
 6 developed as part of the normal discovery process. Microsoft initially objected to Motorola's
 7 interrogatory request for Microsoft's non-infringement positions as premature because
 8 Motorola had not yet disclosed its infringement contentions. As required by the Court's
 9 Scheduling Order, the parties exchanged their respective infringement contentions on
 10 September 2, 2011. Having now received Motorola's infringement contentions, Microsoft
 11 intends to supplement its interrogatory response in accordance with Fed.R.Civ.P. 26(e). No
 12 formal exchange of non-infringement contentions is required.

13 **B. Motorola's Position: Non-Infringement Contentions Should Be Exchanged on**
 14 **December 2, 2011**

15 Pursuant to the Scheduling Order, all dates not expressly set forth in the Order “are
 16 specified in the Local Rules” (Dkt. No. 76 at pg. 2). Because the Order does not set forth a
 17 date for noninfringement contentions, the Local Rules apply, thereby making noninfringement
 18 contentions due on October 3, 2011 (i.e., thirty (30) days after the exchange of infringement
 19 contentions). (L.P.R. 121). Moreover, in response to Motorola’s interrogatory requesting
 20 Microsoft’s noninfringement contentions, Microsoft did not provide a substantive response and
 21 instead deferred to the Schedule and Local Rules, stating that it “will provide information in
 22 response to this Interrogatory in accordance with the schedule for infringement and invalidity
 23 contentions” (Ex. A). Thus, Microsoft previously had agreed to provide its noninfringement
 24 contentions in accordance with the Local Rules. Microsoft did not merely object that the
 25

1 requested discovery was premature – it cited to and relied upon the schedule Motorola looked
2 to in reliance upon that objection.

3 The Local Patent Rules require parties to set forth their positions early in the case and
4 prevent unnecessary motion practice over discovery obligations. Providing noninfringement
5 contentions as required by the Local Rules will focus and potentially narrow the claim
6 construction issues for the Court, thereby maximizing the benefits of the claim construction
7 process. To avoid any further confusion and ensure that the parties exchange noninfringement
8 contentions as set forth in the Local Patent Rules, Motorola respectfully requests that the Court
9 add a December 2, 2011 date to the schedule for the exchange of noninfringement contentions.

10 **III. The Parties' Alternative Proposed Orders**

11 For the reasons set forth above, and good cause having been shown, the parties
12 respectfully request that the case schedule be revised to reflect the agreed proposed changes set
13 forth above in Part I and to provide clarification regarding the exchange of non-infringement
14 contentions as requested in Part II:

15 1. Microsoft's Proposed Order. The Proposed Order submitted by Microsoft
16 reflects the parties' agreed proposed changes to the case schedule, identified in the table above
17 in Part I. No deadline for exchange of non-infringement contentions has been added.

18 2. Motorola's Proposed Order. The Proposed Order submitted by Motorola is
19 identical to that proposed by Microsoft, except for the addition of a proposed deadline for
20 exchange of non-infringement contentions -- December 2, 2012.

AGREED AND STIPULATED TO:

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